

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2-PLR-123782-02
Date:
August 27, 2002

X =

State =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Dear :

This responds to a letter dated February 28, 2002, together with subsequent correspondence, requesting a ruling under the Internal Revenue Code.

Facts

X was incorporated under State law on Date 1. X elected to treated as an S corporation. In Year 1, State administratively dissolved X because X failed to file a report required by State. From Year 1 to Year 2, X was unaware of the dissolution and continued to file Form 1120S, U.S. Income Tax Return for an S Corporation. Upon discovery of the dissolution, X reincorporated in State on Date 2.

Law and Analysis

Section 1361(a)(1) of the Internal Revenue Code defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year. Section 1361(b)(1) provides, in part, that a "small business corporation" must be a domestic corporation.

The core test of corporate existence for purposes of federal income taxation is always a matter of federal law. Whether an organization is to be taxed as a corporation under the Code is determined by federal, not state law. If the conduct of the affairs of a

corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association. See Ochs v. United States, 305 F.2d 844, 847 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963). A corporation is subject to federal corporate income tax liability as long as it continues to do business in a corporate manner, despite the fact that its recognized legal status under state law is terminated. See Messer v. Commissioner, 438 F.2d 774 (3rd Cir. 1971).

Conclusion

Based solely on the facts submitted and the representations made, we conclude that provided that X qualified as a small business corporation under § 1361(b) prior to the administrative dissolution under state law, X's status as a small business corporation is not terminated by reason of the administrative dissolution and subsequent reincorporation, and X will not be required to make a new election under § 1362(a).

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed as to whether the original election made by X to be treated as an S corporation was a valid election under § 1362.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Matthew Lay
Acting Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: (2)
Copy of this letter
Copy for § 6110 purposes